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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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7590 11/15/2005				
TODD E. MARLETTE, ESQ. 10044 Edgewater Terrace, Suite Fort Washington,, MD 20744				
			EXAMINER SMITH, KIMBERLY S	
			ART UNIT 3644	PAPER NUMBER

DATE MAILED: 11/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/736,408

Applicant(s)

FIELDS-BABINEAU, MIRIAM

Examiner

Kimberly S. Smith

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3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-45 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 26-45 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 20 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to the claims have been considered but are moot in view of the newly submitted claims. It is noted that the declaration of Alice De Groot has been considered previously. However, the cited patent document (US 4,483,275) does not disclose the use of the material from which the ring is made. With regards to Ms. De Groot considering and rejection the use of metal rings: the fact that Ms. De Groot did not choose to use a metal ring does not provide a basis for a reason why one with skill in the art would not look to the use of metal rings. Ms. De Groot's declaration provides a clear basis that one with skill in the art considered metal rings to be functional for the stated structural purpose (i.e. the joining of the straps) and the fact that Ms. De Groot rejected the use of metal rings does not limit the fact that one with skill in the art considered them a known material in the art. It is noted that the Specification as originally filed stated that the rings may be formed of either metal or hard plastic.

2. With respect to the request for consideration of Commercial Success and the relation to the declaration of Eric Udler, this was addressed in the supplemental office action dated April 27, 2004.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 35, 40 and 45 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 35, 40 and 45 are inclusive of a limitation requiring the second material to be softer than the first material. However, the specification is silent to such a difference in materials. While it is stated that the first material comprises a flat, hollow braided nylon for the first material and a nylon draw cored (soft cotton nylon braid) for the nose piece, it is not recited that the second material is softer than the first.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 27-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 27 recites the limitation "the non-flat portion" in line 9. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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9. Claims 27-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Borchelt et al., US patent 5,992,352 (Borchelt).

Borchelt discloses a collar member (20) formed of a first material, a snout loop (50) formed of a second material different than the first (as can be seen in Figure 1, the collar member is formed of a wider material than that of the snout loop), first and second cheek straps (40, 30), an under chin strap (60) connected to a cinch ring (62) wherein the lower portion of the snout loop is drawn through the cinch ring to close the jaw of the canine.

Regarding claim 28, Borchelt discloses a dog leash (70) is connected to the lower portion of the snout loop after being drawn through the cinch ring.

Regarding claim 29, Borchelt discloses a retaining ring (64) attached about the lower portion of the snout loop, wherein a dog leash is connected to the retaining ring (as viewed in Figure 1).

Claim Rejections - 35 USC § 103

10. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

11. Claims 34, 35 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt as applied to claim 27 in view of Woodruff, US Patent 4,472,925.

Borchelt discloses the invention substantially as claimed. However, Borchelt does not disclose the second material being a cotton/nylon braid having a cylindrical shape or being softer than the first material. Woodruff teaches within the same field of endeavor the use of a cylindrical braid as a material used in head halters so as to reduce the likelihood of chaffing the

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animal (column 4, line 22). While Woodruff does not disclose the material of choice for the braid, it is notoriously well known in the art that ordinary braided rope is constructed from nylon/cotton. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a cotton/nylon braid in a cylindrical shape as the second material for the purpose of reducing the likelihood of chaffing the animal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It would have further been obvious to one having ordinary skill in the art to use a softer material on the snout portion of the halter since it has been held to be within the general skill of an artisan in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice as it is known that the snout, not being covered by thick fur, is more sensitive than the area located around the neck.

Regarding claim 41, Borchelt discloses a collar member (20) formed of a first material and a snout loop (50) directly contacting the upper canine snout, a first and second cheek strap (40, 30), an under chin strap (60) connected at a second end to a cinch ring (62). However, Borchelt does not disclose the snout loop having a non-flat portion (although, Borchelt does teach the snout loop formed of a second material.) Woodruff teaches within the same field of endeavor the use of a non-flat braided rope (column 4, line 22) for the purpose of reducing chaffing of the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a braided rope as taught by Woodruff as the material of the upper snout loop as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design

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choice. As such, it would be obvious for one in the art to choose a braided rope to produce areas of known chaffing in a head halter with a material constructed to reduce such chaffing.

12. Claims 26, 36-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt et al., US Patent 5,992,352 (Borchelt) in view of De Groot, US Patent 4,483,275 and further in view of Woodruff, US Patent 4,472,925.

Borchelt discloses a canine head halter (10) comprising a collar member (20) configured and arranged to encircle a canine neck behind the ears and below the chin forming a continuous loop, a snout loop (50) configured and arranged to encircle the canine snout having a upper nose member and an under chin member forming a continuous loop; a first cheek strap (40), a second cheek strap (30) and an under chin strap (60) connected at a first end to the bottom strap of the collar member and connected at a second end to a metal cinch ring (62), wherein a portion of the under chin member of said snout loop is drawn through the cinch ring for attachment to a dog leash (as can be viewed in Figure 1). However, Borchelt does not disclose the collar member comprising a top strap and a bottom strap connected via a first and second metal collar ring nor the snout loop being configured with an upper and lower member being connected via a first and second metal snout ring. De Groot teaches within the same field of endeavor the use of a top strap connected to a bottom strap via a first and second collar ring and the upper nose member and under chin member connected via a first and second snout loop ring as being a functional equivalent of a fixed joint configuration (as shown in Figure 5 of De Groot) in order to adjust the halter to the configuration of the animal's physiology (refer column 2, line 29 in which it is stated the loop and ring system can be used for both connections 20 and 26). Therefore, because the use of a loop and ring system was a known equivalent for the attachment of jointed strap

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structures, one of ordinary skill in the art would have found it obvious to substitute the fixed structure as disclosed by Borchelt for the loop and ring system taught by De Groot. While De Groot does not positively state the material used for the ring, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a metal ring, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (note that Borchelt positively discloses that metal rings are known to be used in a dog halter apparatus). It is noted that the modification of Borchelt rendered obvious by the De Groot teaching of a ring connecting upper and lower sections of a collar assembly to the chin strap inherently teaches that the collar member and the snout loop would be comprised of an upper member and a lower member.

Borchelt as modified further does not disclose the snout loop upper member being lofted and of a secondary material. Woodruff teaches within the same field of endeavor the use of a braided rope (column 4, line 22) for the purpose of reducing chaffing of the animal. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a braided rope (which the applicant's specification has defined as being "lofted") as the material of the upper snout loop as it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. As such, it would be obvious for one in the art to choose a braided rope to produce areas of known chaffing in a head halter with a material constructed to reduce such chaffing.

Regarding claim 38, Borchelt as modified discloses the invention substantially as claimed. Borchelt further discloses that the first material is a flat braid strap (reference Figure and column 3, line 13). However, Borchelt as modified does not positively disclose the material is nylon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a nylon braid since it has been held to be within the general skill of a worker in the art to select a known material for its intended use as a matter of obvious design choice.

Regarding claims 39 and 40, Borchelt as modified discloses the invention substantially as claimed. However, Borchelt does not disclose the second material being a cotton/nylon braid having a cylindrical shape or being softer than the first material. Woodruff teaches within the same field of endeavor the use of a cylindrical braid as a material used in head halters so as to reduce the likelihood of chaffing the animal (column 4, line 22). While Woodruff does not disclose the material of choice for the braid, it is notoriously well known in the art that ordinary braided rope is constructed from nylon/cotton. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a cotton/nylon braid in a cylindrical shape as the second material for the purpose of reducing the likelihood of chaffing the animal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It would have further been obvious to one having ordinary skill in the art to use a softer material on the snout portion of the halter since it has been held to be within the general skill of an artisan in the art to select a known material on the basis of its suitability for the intended use

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as a matter of design choice as it is known that the snout, not being covered by thick fur, is more sensitive than the area located around the neck.

Regarding claim 43, Borchelt in view of Woodruff discloses the invention substantially as claimed. However, Borchelt as modified does not disclose the use of ring members for connecting the cheek straps to the collar and snout member. De Groot teaches within the same field of endeavor the use of a top strap connected to a bottom strap via a first and second collar ring and the upper nose member and under chin member connected via a first and second snout loop ring as being a functional equivalent of a fixed joint configuration (as shown in Figure 5 of De Groot) in order to adjust the halter to the configuration of the animal's physiology (reference column 2, line 29 in which it is stated the loop and ring system can be used for both connections 20 and 26). Therefore, because the use of a loop and ring system was a known equivalent for the attachment of jointed strap structures, one of ordinary skill in the art would have found it obvious to substitute the fixed structure as disclosed by Borchelt for the loop and ring system taught by De Groot so as to better fit the physiology of the animal.

Regarding claims 44 and 45, Borchelt as modified discloses the invention substantially as claimed. However, Borchelt does not disclose the second material being a cotton/nylon braid having a cylindrical shape or being softer than the first material. Woodruff teaches within the same field of endeavor the use of a cylindrical braid as a material used in head halters so as to reduce the likelihood of chaffing the animal (column 4, line 22). While Woodruff does not disclose the material of choice for the braid, it is notoriously well known in the art that ordinary braided rope is constructed from nylon/cotton. As such, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a cotton/nylon braid in a

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cylindrical shape as the second material for the purpose of reducing the likelihood of chaffing the animal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. It would have further been obvious to one having ordinary skill in the art to use a softer material on the snout portion of the halter since it has been held to be within the general skill of an artisan in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice as it is known that the snout, not being covered by thick fur, is more sensitive than the area located around the neck.

13. Claims 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt (as applied to claim 27 above), and further in view of De Groot, US Patent 4,483,275.

Regarding claims 30 and 32, Borchelt discloses the invention substantially as claimed. However, Borchelt does not disclose the first and second cheek straps are connected to the collar member and the snout loop by respective first and second rings. De Groot teaches within the same field of endeavor the use of a top strap connected to a bottom strap via a first and second collar ring and the upper nose member and under chin member connected via a first and second snout loop ring as being a functional equivalent of a fixed joint configuration (as shown in Figure 5 of De Groot) in order to adjust the halter to the configuration of the animal's physiology (refer column 2, line 29 in which it is stated the loop and ring system can be used for both connections 20 and 26). Therefore, because the use of a loop and ring system was a known equivalent for the attachment of jointed strap structures, one of ordinary skill in the art would have found it obvious to substitute the fixed structure as disclosed by Borchelt for the loop and ring system taught by De Groot so as to adjust the halter to the physiology of the animal.

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Regarding claims 31 and 33, Borchelt as modified discloses the invention substantially as claimed. However, Borchelt as modified does not disclose the material from which the rings are made. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a metal ring, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice (note that Borchelt positively discloses that metal rings are known to be used in a dog halter apparatus).

14. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Borchelt as modified as applied to claim 41 above, and further in view of Anderson et al., US Patent 4,838,206 (Anderson).

Borchelt as modified discloses the invention substantially as claimed. However, Borchelt does not disclose the use of a buckle connecting a first end of the collar member to a plurality of positions along a second end of the collar. Anderson teaches within the same field of endeavor the use of a piercable woven fabric (column 3, lines 24-26) and a buckle (14) for the attachment and adjustment of the collar member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a buckle system such as that taught by Anderson with the device of Borchelt as these two attachment means are notoriously well known functional equivalents in the art for attaching and releasing a collar member and as such, the use of these known equivalents would be within the level of ordinary skill in the art.

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Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curran, US 6,595,156.

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

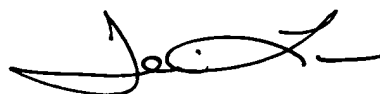
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith
Examiner
Art Unit 3644

kss

A handwritten signature in black ink, appearing to read 'Teri Pham Luu', with a stylized flourish at the end.

TERI PHAM LUU
SUPERVISORY
PRIMARY EXAMINER